

BPS/JFV:mg

20-257-3-148

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|-----------------------------------|---|---------------------|
| SABRINA FLOWERS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Court No.: 08 C 449 |
| |) | |
| SOUTH WESTERN MOTOR SALES, INC., |) | |
| d/b/a TOYOTA SCION ON WESTERN AND |) | |
| SANTANDER CONSUMER USA, INC. |) | |
| d/b/a DRIVE FINANCIAL SERVICES |) | |
| |) | |
| Defendant, |) | |

**DEFENDANT, SOUTH WESTERN MOTOR SALES, INC.'s MOTION TO DISMISS
COUNT I OF PLAINTIFF'S COMPLAINT**

Defendant SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, by and through its attorneys CREMER, KOPON, SHAUGHNESSY & SPINA, LLC, Brian P. Shaughnessy, and Jaya F. Venkataramani, and for its Motion to Dismiss Count I of Plaintiff's Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of its motion, Defendant states as follows:

1. That on January 21, 2008, Plaintiff, Sabrina Flowers, brought an action in the United States District Court for the Northern District of Illinois.
2. That the Plaintiff filed a five-count Complaint against Defendants, South Western Motor Sales, Inc., d/b/a Toyota Scion on Western and Santander Consumer USA Inc., d/b/a Drive Financial Services, alleging violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq.*, and

alleging negligence arising out of a transaction involving the purchase of a used 2005 Mitsubishi Galant. A copy of Plaintiff's Complaint is attached hereto and made a part hereof as *Exhibit A*.

3. That Count I of Plaintiff's Complaint alleges that Defendant, South Western Motor Sales, Inc. violated Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2 and engaged in unfair and deceptive acts and practices.
4. That a Complaint filed in Federal District Court, alleging a violation of the Illinois Consumer Fraud Act must also comply with Federal Rule of Civil Procedure, 9(b), which requires "all averments of fraud" to be "stated with particularity." *Vicom, Inc. v. Harbridge Merchant Services, Inc.*, 20 F.3d 771, 777 (7th Cir. 1994) (quoting Fed. R. Civ. P. 9(b)).
5. That Count I of Plaintiff's Complaint fails to plead fraud with particularity by failing to identify "the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated." *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923 (7th Cir. 1992)(quoting *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992)).
6. That Defendant South Western Motor Sales, Inc. seeks dismissal of Count I of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6).
7. That Dismissal is appropriate because Plaintiff fails to state a proper claim for relief directed to Defendant South Western Motor Sales, Inc. for alleged violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2, under Fed. R. Civ. P. 9(b).

8. That Defendant, South Western Motor Sales, Inc. adopts and incorporates by reference its *Memorandum in Support of Its Motion to Dismiss Count I of Plaintiff's Complaint* as though fully set forth herein.

WHEREFORE, Defendant, SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, respectfully requests this Honorable Court to dismiss Count I of Plaintiff's Complaint and any other relief this Honorable Court deems just.

Respectfully Submitted,

/s/ Brian P. Shaughnessy

One of the Attorneys for
South Western Motor Sales, Inc.

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